

**Opinion of the Advisory Committee on mergers given at its meeting of 7 May 2015 regarding
a draft decision relating to Case M.7421 Orange/Jazztel**

Rapporteur: Ireland

(2015/C 407/08)

Concentration

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
2. The Advisory Committee agrees with the Commission that the notified transaction has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

Market definition

3. The Advisory Committee agrees with the Commission's definitions of the relevant product and geographic markets in the draft Decision.
4. In particular, the Advisory Committee agrees that the following markets should be distinguished.
 - (i) Spanish market for fixed telecommunication services to end customers (retail fixed voice services market).
 - (ii) Spanish market for fixed internet access services to end customers (retail fixed internet access services market).
 - (iii) Spanish market for mobile telecommunication services to end customers (retail mobile telecommunication services market).
 - (iv) Possible Spanish markets for multiple-play services:
 - (a) possible Spanish market for dual-play services to end customers;
 - (b) possible Spanish market for triple-play services to end customers;
 - (c) possible Spanish market for triple- and quadruple-play services to end customers;
 - (d) possible market for multiple-play services to end customers.
 - (v) Spanish wholesale market for call termination services on fixed networks.
 - (vi) Spanish wholesale access and call origination on mobile networks.
 - (vii) Spanish wholesale mobile call termination market.
 - (viii) Spanish wholesale broadband access services.

Horizontal effects

5. The Advisory Committee agrees with the Commission's assessment that the proposed operation is likely to give rise to non-coordinated horizontal effects that would significantly impede effective competition due to the removal of two important competitive forces (Orange and Jazztel) on:
 - (i) the Spanish market for fixed internet access services to end customers (retail fixed internet access services market);
 - (ii) the possible Spanish retail market for dual-play services;
 - (iii) the possible Spanish retail market for triple-play services;
 - (iv) the possible Spanish retail market for triple- and quadruple-play services; and
 - (v) the possible Spanish retail market for multiple-play services.
6. The Advisory Committee agrees with the Commission's assessment that the proposed operation is not likely to give rise to non-coordinated horizontal effects that would significantly impede effective competition in:
 - (i) the Spanish retail market for fixed voice services;
 - (ii) the Spanish retail market for mobile telecommunication services; and
 - (iii) the Spanish wholesale market for broadband access services.

Vertical effects

7. The Advisory Committee agrees with the Commission's assessment that the proposed operation is not likely to give rise to non-coordinated vertical effects that would significantly impede effective competition in:
 - (i) the wholesale market for fixed call termination services and the retail supply of fixed voice services and retail supply of mobile telecommunication services;
 - (ii) the wholesale market for mobile call termination services and the retail supply of fixed voice services and retail supply of mobile telecommunication services; and
 - (iii) the wholesale market for access and call origination services on mobile networks and the retail supply of mobile telecommunication services.

Efficiencies

8. The Advisory Committee agrees with the Commission's assessment not to accept efficiency claims of the Notifying Party relating to:
 - (i) allegedly increased fibre roll-out after the merger;
 - (ii) improved offer of quadruple play bundles; and
 - (iii) improved ability to serve consumers based on fibre network and save xDSL access charges.
9. The Advisory Committee agrees with the Commission's assessment to accept efficiency claims of the Notifying Party relating to the elimination of double marginalisation of mobile services provided by Orange to Jazztel.

Remedies

10. The Advisory Committee agrees with the Commission that the final commitments offered by the Notifying Party on 20 April 2015 address the competition concerns identified by the Commission on the Spanish retail market for fixed internet access services, the possible Spanish retail market for dual-play services, the possible Spanish retail market for triple-play services, the possible Spanish retail market for triple- and quadruple-play services, and the possible Spanish retail market for multiple-play services.
11. The Advisory Committee agrees with the Commission's conclusion that, subject to the full compliance with the final commitments, the notified transaction is not likely to significantly impede effective competition in the internal market or in a substantial part of it.
12. The Advisory Committee agrees with the Commission that the notified transaction must therefore be declared compatible with the internal market and the functioning of the EEA Agreement in accordance with Articles 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.

Other issues raised during the discussion:

Several Member States expressed their disagreement with the Commission's decision not to refer the case to Spain on the basis of Article 9 of the Merger Regulation.
